

RAYMOND L. DINWIDDIE

IBLA 82-738

Decided June 10, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 14373 (Wash) and OR MC 14374 (Wash).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequences must be borne by the claimant.

APPEARANCES: Raymond L. Dinwiddie, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard L. Dinwiddie appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 18, 1982, which rejected his evidence of annual assessment work for 1981 and declared the unpatented Shantom and Goldstar lode mining claims, OR MC 14373 (Wash), and OR MC 14374 (Wash), abandoned and void because evidence of annual assessment work for calendar year 1981 had not been filed on or before December 30, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The evidence was received and date stamped by BLM December 31, 1981, at 7:30 a.m.

Appellant states that he mailed the instrument describing the assessment work for 1981 by ordinary mail on December 29, 1980, from Everett, Washington, in expectation that the Postal Service would deliver the envelope to BLM on December 30. Appellant also stated that the death and burial of his wife in the last week of December 1981 had driven other matters from his mind.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a), require that evidence of assessment work for each year be filed in the proper BLM office on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although the evidence shows that the document was actually mailed December 29, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the delay in delivery of the envelope containing the evidence of assessment work to BLM was caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Regina McMahon, *supra*; Everett Yount, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Although the Board is sympathetic with the appellant's bereavement at the time, the filing requirement is imposed by statute, and we have no authority to waive it. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to confer with BLM about the possibility of relocating his claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

